BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

BUDDY L. HARDING)	
Claimant)	
VS.	
)	Docket No. 241,758
ELKO MECHANICAL & CONSTRUCTION	·
Respondent)	
AND)	
)	
CYBERCOMP	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the April 14, 1999 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

This is a claim for a January 29, 1999 accident. After conducting a preliminary hearing on April 13, 1999, the Judge awarded claimant medical benefits.

Respondent and its insurance carrier contend the Judge erred. They argue that claimant failed to prove that he injured his back while working for the respondent on the date alleged. Conversely, claimant requests the Board affirm the preliminary hearing Order.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

- 1. The Board affirms the Judge's finding that Mr. Harding either injured or aggravated his back while working for Elko Mechanical & Construction on or about January 29, 1999.
- 2. Elko Mechanical & Construction employed Mr. Harding to haul heavy equipment. The accident occurred while Mr. Harding was helping to make repairs on a trailer. He testified in part:

I was helping a mechanic fix the lights on a trailer and I was going to get tools and etc. for the mechanic and I was coming back, I stepped up on the trailer with my left foot. As my right foot was coming up on the trailer, it slipped back

off the trailer and I kind of did the splits and I fell back to my left and there was a mud flap there, kind of grabbed ahold of and then my back kind of bumped the tires on the back of the trailer itself, but when I did the splits with my legs is when I injured my back.

3. The Judge had the opportunity to observe Mr. Harding testify and assess his demeanor and credibility. In this instance, the Board, giving some deference to the Judge's implied finding of credibility, is also persuaded by Mr. Harding's testimony and finds that the incident occurred as he described it.

CONCLUSIONS OF LAW

- 1. An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition. The test is not whether the accident caused the condition, but whether the accident aggravated or accelerated a preexisting condition.²
- 2. For preliminary hearing purposes, Mr. Harding has established that he either aggravated or injured his back while working for Elko Construction on or about January 29, 1999. Therefore, he is entitled to receive workers compensation benefits for that accident.
- 3. As provided by the act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the April 14, 1999 preliminary hearing Order entered by Judge Steven J. Howard.

IT IS SO ORDERED.

Dated this da	ıy of May 1999	١.
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BOARD MEMBER

c: Kathleen J. Cossairt, Olathe, KS
Daniel N. Allmayer, Olathe, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

³ K.S.A. 1998 Supp. 44-534a(a)(2).